

August 5, 2002

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: New England Power Company, D.T.E. 02-33
Canal Electric Company/Cambridge Electric Light Company/
Commonwealth Electric Company, D.T.E. 02-34

Dear Ms. Cottrell:

New England Power Company (“NEP”) and Canal Electric Company (“Canal”), Cambridge Electric Light Company (“Cambridge”), and Commonwealth Electric Company (“Commonwealth”) d/b/a NSTAR Electric (the “NSTAR Companies”) hereby jointly file this reply letter with the Department of Telecommunications and Energy (the “Department”) in D.T.E. 02-33 and D.T.E. 02-34. On July 31, 2002, NEP and the NSTAR Companies filed separate Initial Briefs in D.T.E. 02-33 and D.T.E. 02-34. NEP’s and the NSTAR Companies’ Initial Briefs demonstrated that the Department’s approval of the sale of their respective ownership shares of the Seabrook Nuclear Power Station (“Seabrook” or the “Station”) to FPLE Seabrook (“FPLE”) will result in significant savings and additional benefits for the companies’ customers. Also on July 31, 2002, FPLE Seabrook filed its Initial Brief in the above-referenced proceedings requesting the Department’s approval of the sale of Seabrook and related findings.

- Background

The Office of the Attorney General (the “Attorney General”) filed a letter on July 31, 2002 with the Department (the “Letter”) in opposition to the petitions of NEP and the NSTAR Companies (as well as the petition of The Connecticut Light & Power Company (“CL&P”) docketed as D.T.E. 02-35 (together, the “Petitions”). The Attorney General’s opposition to the Petitions in the Letter was focused on an interpretation of the Purchase and Sale Agreement (“PSA”) signed by NEP, Canal, CL&P, and FPLE Seabrook (along with other selling owners of the Station) regarding the issue of excess decommissioning funds. Specifically, the Attorney General advocated that “Massachusetts customers receive the same favorable treatment regarding the sharing of excess decommissioning funds that the customers of the state of New Hampshire ...receive” (Attorney General Initial Brief at 1).

During the proceeding, the Attorney General expressed concern regarding the interpretation of Section 5.10(h) of the PSA. Section 5.10(h) addresses the possible return of decommissioning funds that have been contributed by customers prior to the Station's sale to FPLE Seabrook. Specifically, the PSA provides as follows:

(h) Customer Contribution. When the Buyer or its successors have completed Decommissioning of the Facility as required by Section 5.23 and by applicable Law, (i) any remaining Decommissioning Funds determined by the NDFC¹ to be New Hampshire customer contributions pursuant to RSA 162-F:21-b II (c), and (ii) any remaining Decommissioning Funds determined by the Governmental Authority having jurisdiction in Connecticut, Massachusetts and Rhode Island, as the case may be, to be customer contributions from the customers of such state under the applicable Law of such state, to the extent required by the applicable Law of such state, shall be paid by the Buyer in coordination with applicable Governmental Authority having jurisdiction in such state for the benefit of the customers of the relevant Seller or Sellers in such state.

Accordingly, Section 5.10(h) of the PSA references two categories of "customer contributions" that might be returned to customers "when the Buyer or its successors have completed Decommissioning of the Facility": (1) any remaining Decommissioning Funds² determined by the NDFC to be New Hampshire customer contributions pursuant to RSA 162-F:21-b II (c), and (2) any remaining Decommissioning Funds determined by the Governmental Authority³ having jurisdiction in Connecticut, Massachusetts and Rhode Island, as the case may be, to be customer contributions from the customers of such state under the applicable Law⁴ of such state, to the extent required by the applicable Law of such state.

- Excess Decommissioning

The New Hampshire statute referenced in Section 5.10(h), RSA 162-F:21-b II (c), explicitly addresses the return of "customer contributions" to New Hampshire customers as follows:

¹ The "NDFC" is the New Hampshire Nuclear Decommissioning Finance Committee.

² As defined in Section 13 of the PSA.

³ Section 13 of the PSA defines "Governmental Authority" as "any federal, state, local or other governmental, regulatory or administrative agency, commission, department, board, or other governmental subdivision, court, tribunal, arbitral body or other governmental authority."

⁴ Section 13 of the PSA defines Law as "all laws, rules, regulations, codes, injunctions, judgments, orders, decrees, rulings, interpretations, constitution, ordinance, common law, or treaty, of any Governmental Authority."

Upon the discontinuation of a customer nuclear decommissioning charge due to the transfer by a utility of an ownership interest occurring after January 1, 2001, the [NDFC] shall determine the portion of the [F]und⁵ contributed by New Hampshire customers of the electric utility, including interest and earnings as of the date of ownership transfer, and designate that portion of the [F]und as the customer contribution. If decommissioning is completed for less than the customer contribution, the excess shall be refunded to customers in a manner determined by the public utilities commission.

RSA 162-F:21-b II (c). RSA 162-F:21-b II (c) sets the New Hampshire “customer contribution” that is eligible to be paid by FPLE Seabrook or its successors at the time decommissioning of Seabrook is completed for the benefit of New Hampshire customers as “the portion of the [F]und contributed by New Hampshire customers of the electric utility, including interest and earnings as of the date of ownership transfer,” as determined by the NDFC. Accordingly, RSA 162-F:21-b II (c) provides that, if decommissioning of Seabrook is completed for less than the New Hampshire “customer contribution,” the excess shall be refunded to New Hampshire customers in a manner determined by the New Hampshire Public Utilities Commission. In determining excess decommissioning funds, customer contributions do not include interest and earnings that accrue after the date of closing and customer contributions are deemed to be applied first against decommissioning expenses.

At the time of the execution of the PSA, the New Hampshire statute on excess decommissioning was in effect and there was no comparable law in Massachusetts. NEP and the NSTAR Companies believe that treatment of excess decommissioning funds in accordance with the New Hampshire statute would squarely address the primary issue raised by the Attorney General in his Letter. NEP and the NSTAR Companies also believe, however, that any different treatment of excess decommissioning funds (e.g., by placing Massachusetts customers in a more favorable position than New Hampshire) could adversely affect the closing of the transaction.

- Conclusions

Beyond the issue of excess decommissioning, the Department must look to the entirety of the PSA to fairly determine whether the selling owners have maximized the value of the Station in the context of the Station’s auction and whether they otherwise meet the Department’s standards of review regarding the divestiture of generation facilities. Accordingly, NEP and the NSTAR Companies reiterate that the price offered for Seabrook by FPLE Seabrook was arrived at through an open, competitive auction that ensured complete, uninhibited, and non-discriminatory access to all data and information

⁵ In New Hampshire, the term “Fund” means a nuclear decommissioning financing fund established pursuant to RSA 162-F:19.

by all of the participating parties (NEP Initial Brief at 2; NSTAR Companies Initial Brief at 3). As a result, sale of the Station to FPLE Seabrook will result in significant savings for their respective Massachusetts customers (approximately \$50 million for NEP and approximately \$6.1 million for the NSTAR Companies) (NEP Initial Brief at 6; NSTAR Companies Initial Brief at 4). These significant savings resulting from the divestiture reflect the benefit of participation in the auction of Seabrook collectively with other selling owners, thereby offering FPLE Seabrook and other bidders the opportunity to secure an 88.23 percent interest in Seabrook (NEP Initial Brief at 5; NSTAR Companies Initial Brief at 4). This opportunity to obtain such a large majority interest in Seabrook provided an incentive for bidders to maximize their bids, and thus, will result in Massachusetts customers receiving the benefits of the "control premium" to be paid by FPLE Seabrook to own a controlling interest in Seabrook (NEP Initial Brief at 5; NSTAR Companies Initial Brief at 4). Should FPLE Seabrook not close with NEP and the NSTAR Companies, it is highly unlikely that the companies would be able to receive comparable benefits if they were to attempt to divest their respective ownership interests individually.

Similarly, the Department should not modify the PSA's provisions with respect to the timing of closings of the sales of the various Seabrook owners. NEP and the NSTAR Companies oppose changing the PSA's provisions governing closing, which were carefully negotiated with an eye toward allowing all of the selling owners to meet their specific regulatory and contractual obligations. If the Department approves the proposed transaction in accordance with the Petitions and the recommendations stated herein, it will allow NEP and the NSTAR Companies to participate in the initial closing.

Accordingly, NEP and the NSTAR Companies have demonstrated that their Petitions meet the standards established in the Electric Restructuring Act, Chapter 164 of the Acts of 1997, regarding the divestiture of generation facilities and the necessary findings as required by § 32(c) of the Public Utilities Holding Company Act, and that the divestiture and the NSTAR Companies' Buyout Agreement is consistent with: (1) NEP's Restructuring Settlement, approved by the Department in Massachusetts Electric Company, D.P.U. 96-25-A (1997) and D.P.U./D.T.E. 96-25-B (1997); (2) the NSTAR Companies' Restructuring Plan, approved by the Department in Cambridge Electric Light Company, et al., D.P.U./D.T.E. 97-111 (1998); and (3) Department precedent. Therefore, NEP and the NSTAR Companies respectfully request that the Department make the findings requested in their Petitions by September 6, 2002, which would facilitate a simultaneous closing by each of the selling owners.

Respectfully submitted,

ON BEHALF OF THE NSTAR COMPANIES

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